

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Michael J. Fitzpatrick

v.

Civil No. 04-cv-224-JD

Rockingham County Department
of Corrections, et al.

O R D E R

Michael J. Fitzpatrick, proceeding pro se, brought claims against Rockingham County Department of Corrections and several of its employees. Following preliminary review, Fitzpatrick's claims that he was denied access to the courts and that the defendants interfered with his incoming mail were served. On September 8, 2005, the defendants filed a motion seeking sanctions against Fitzpatrick due to his failure to provide timely responses to discovery requests that were sent to him in July. Fitzpatrick filed a motion on September 20, 2005, asking for a copy of his file in this case because his file had disappeared when he moved from one prison to another.

On September 29, 2005, the magistrate judge ordered the defendants to provide Fitzpatrick with a complete copy of his file in this case, except for photographs that were being held at the court as evidence. The magistrate judge ordered Fitzpatrick to serve full answers to the defendants' interrogatories within

thirty days after he received the copy of his file. The order also extended the deadline to file motions for summary judgment to December 15, 2005.

The defendants filed a motion on November 16, 2005, seeking default judgment or dismissal of the case because Fitzpatrick had not, as of that date, provided responses to the defendants' interrogatories as he had been ordered to do. In the motion, the defendants represented that they had forwarded a complete copy of the file to Fitzpatrick on October 6, 2005, with an index and an extra set of the defendants' responses to Fitzpatrick's discovery requests. The defendants had previously sent Fitzpatrick extra copies of their discovery requests. In the letter accompanying the copy of the file, defendants' counsel wrote: "you are required to provide us with your full responses no later than Friday, November 11, 2005." Fitzpatrick did not respond to the defendants' counsel's letter, did not provide answers to the interrogatories, as he had been ordered to do, and has not filed a response to the defendants' motion for sanctions.

Given Fitzpatrick's demonstrated failure to respond or proceed in this case, despite the defendants' notice in their motion that they were seeking the dismissal of his case, it is appropriate to dismiss his complaint without prejudice.

Conclusion

For the foregoing reasons, the defendants' motion for sanctions (document no. 32) is granted. The plaintiff's complaint is dismissed without prejudice.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

December 14, 2005

cc: Michael J. Fitzpatrick, pro se
Charles P. Bauer, Esquire